

F. M. S. REPORTS

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C. J.

October 11, 1938

STRAITS PLANTATIONS

LIMITED Petitioners
(Appellants)

vs.

THE COLLECTOR OF LAND REVENUE,

SITIAWAN Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 32 of 1938]

Land Code, S. 107—scope and meaning of.

Under Section 107 of the Land Code, the Collector of Land Revenue has full jurisdiction to deal with all matters, not expressly excepted, where the land involved is held under E.M.R.

Itam Jamaluddin v. Sapiah (1936), 5 M.L.J. 276 explained.

[MAGISTRATE'S CIVIL APPEAL]

*Mills for the Appellants.**M. C. Hay* (D.L.A.) for the Respondent.*Cur. Ad. Vult.*

TERRELL, AG. C.J.—The petitioners are a registered Company, and in 1937 purchased an estate known as the Spynie Estate in Lower Perak from the Kayan (F.M.S.) Coconut Company Ltd. Included in the purchase were two pieces of land held under Mukim Extract in the Mukim Register of Lekir, and known as E.M.R. Nos. 800 & 801. These particular lands were registered in the name of one J. M. Counsel as proprietor, and had been so registered since their issue in August 1914. The pieces of land in question came into the possession of the Kayan Company some time prior to the 4th of July 1924 and remained in their possession until the sale to the petitioners in 1937. J. M. Counsel, the registered proprietor, left the Federated Malay States many years ago, and cannot now be traced.

The petitioners accordingly claim that they are in fact the owners of the lands in question, and applied to the Collector of Land Revenue, Sitiawan, under section 107 (i) of the Land Code to be registered as proprietors. The Collector, however, refused to go into the merits of the application, holding that he was precluded from doing so by the judgment of Aitken, J. in *Itam Jamaludin v. Sapiah*, reported in (1936) 5 M.L.J. 276, and it is against such refusal that the petitioners have appealed. It is necessary to refer more fully to this case, as the head-note only refers to the interpretation placed by the learned

Judge on section 107 of the Land Code, and does not set out the actual decision.

The short facts of that case are as follows. One Din bin Ariffin duly executed a transfer of land held under an E.M.R. to one Sapiah as trustee for his adopted daughter Kamlah. The transferor however died without the transfer, which was fully in order, having been registered, and thereupon it became incapable of registration owing to the provisions of section 85 (i) of the Land Code. Sapiah accordingly applied under section 107 to be registered as the proprietor, and the Collector gave his decision in her favour after hearing the objections of one of the next of kin who would be entitled if the property still formed part of the estate of the deceased. The objector appealed, and his appeal was allowed by Aitken J. and the Collector's order was set aside. The learned Judge's grounds of decision are to the effect that under section 96 of the Land Code "no instrument until registered shall be effectual to pass any land or any interest therein," and that no ground had been shown for conferring the 'indefeasible title of the proprietor' (section 42 (i)) upon someone else. With this decision I respectfully agree and would only add that even if equitable principles had been considered the applicant would have been in no better position, since equity will not intervene to perfect an imperfect gift; and I would refer to the judgment of the Privy Council in *Macedo v. Beatrice Stroud*, (1922) 2 A. C. page 330 at page 338. This was a case of settlement of registered land in Trinidad, where the formalities of registering a transfer had not been complied with.

Now it will be observed that in the judgment referred to above Aitken, J. reversed the Collector of Land Revenue upon the merits of the application before him: he does not say that the Collector had no jurisdiction to inquire into the merits. In the latter part of his judgment, however where the learned Judge is considering the effect and scope of section 10 (i) he appears to come to the conclusion that section 107 is not intended for the consideration of such matters as the Collector had in fact considered, and the inference therefrom is that the Collector had no jurisdiction to determine the issue before him at all. This is obviously the interpretation which the Collector has placed upon the judgment of Aitken, J. in the case now before the Court, since in his grounds of judgment he says:—

"I was unable to accept this application as falling within the scope of section 107 of the Land Code;"

and he specifically bases his ruling upon the judgment quoted above. In that part of his judgment which is relied on by the Collector Aitken, J. comes to the conclusion that section

107 of the Land Code intended to provide a simple procedure for rectifying errors on the face of the Register which have arisen owing to:—

- (a) fraud or misrepresentation on the part of the registered proprietor, chargee, lessee etc.,
- (b) registration of a forged instrument, or of an insufficient or void instrument,
- (c) the defeat of the proprietor's title by operation of law or
- (d) some mistake upon the part of the proper registering authority.

The learned Judge then proceeds to point out that (a), (b) & (c) are supported by the express provision of section 42 of the Land Code, and (d) by section 230 (e). In view of the fact that the learned Judge's observations upon the scope of section 107 are purely *obiter*, and that he himself expressed considerable diffidence in putting them forward, the matter not having been argued before him, I do not feel bound necessarily to follow his interpretation; and in fact there are two decisions of the Court of Appeal of the Federated Malay States which, though not strictly in point, seem to indicate that in the past the Courts have given a wider interpretation to section 37 of the 1911 Land Enactment upon which section 107 is based.

The first case was that of *Ong Tin & another v. Seremban Motor Garage*, 1 F.M.S.L.R. page 308. In that case the respondents claimed under an unregistered document purporting to give them a lease in perpetuity as against the registered transferees of the land in question. The proceedings were commenced by civil action before Edmonds J. who found in favour of the respondents, but this decision was reversed on appeal, and in the course of his judgment on page 319 Earnshaw J.C. stated that the provisions of section 37 of the Land Enactment 1911 should be applied in the first instance and should be followed even in the case of an executory contract of sale. This indicates that in the opinion of Earnshaw, J.C. such matters as claims under an unregistered document and an unexecuted contract of the sale are proper matters for the Collector to deal with. These are clearly outside the narrower limits suggested by Aitken, J. It should be remarked, however, that this ruling was not necessary for the decision of the Court, and is accordingly *obiter*.

The second case was that of *Raphiah v. Haji Arshad*, 6 F.M.S. Law Reports, page 64. That was also a case under the 1911 Code and it would appear that there were two claimants for a piece of land held under E.M.R. which was registered in the name of a third party, who, it was alleged, had never been more than a nominal owner. The application was originally made to the Commissioner of Lands, and his decision in favour of one

of the claimants was upheld by Farrer-Manby, Ag. C.J., and by the Court of Appeal. Under section 37 of the 1911 Code the Collector had only jurisdiction when the value of the land did not exceed \$1,000/- and the Commissioner of Lands under section 49 (i) had jurisdiction to deal with applications which would ordinarily be made to the Collector, if the claim could not properly be dealt with under section 37. Although in the Court of Appeal the decision was based on the finding that no appeal lay, there is no suggestion that a claim to registered land made by holders of rival equities was not a proper matter for the consideration of the Collector or the Commissioner as the case might be. Here again there is no direct decision but merely an inference that in practice the Courts gave section 37 of the 1911 Land Enactment a wide interpretation.

In view of the inconclusive nature of these authorities, I have found it necessary to consider the matter *de novo*.

In tracing the history of section 107 it will not be necessary to go further back than the Land Enactment of 1911, and for convenience I have set out the relevant portions of section 37 (i) of the 1911 Enactment and of section 107 (i) of the Land Code side by side.

Section 37 (i)

Any person asserting that he himself, or any other person through whom he claims, is or has become entitled to be registered under this part as the owner of any land in any mukim other than land held under grant or lease or certificate of title may whether such land shall have been alienated to any other person or otherwise, apply to the Collector to record him as such in the register of the mukim in which the land is situate.

Section 107 (i)

Any person asserting that he has a right otherwise than by succession to a deceased proprietor or by virtue of an agreement of sale to be registered in the mukim register as the proprietor of or as having an interest in land held under entry in the mukim register may, if the value of the land does not exceed \$3,000, apply to the Collector for an order that such memorial shall be made upon the entry in the mukim register as shall register him as such proprietor or as having such interest.

It will be seen that under the 1911 Enactment, the Collector had full jurisdiction to deal with all claims of any nature whatever. His jurisdiction was not fettered or limited in any way, provided that the land was held under E.M.R. Under section 38 (i) there was an appeal from the Collector to the Resident, and under

section 38 (iii) there was an appeal from the Resident to the Court. Section 38 (iv) is important as it ousts the jurisdiction of the Court (except by way of appeal) in any matter in which jurisdiction is given by section 37 to the Collector. It was obviously the intention of the legislature that in the case of land held under E.M.R. matters which in the case of a certificate of title would come before the Court, should be dealt with by the Collector.

Section 37 of the 1911 Enactment was repealed and re-enacted with amendments by Enactment No. 41 of 1918. Section 37 (i) now excluded claim by right of succession, which however were also dealt with by the Collector under a procedure set out in a new section 37A. In each case the jurisdiction was limited to cases where the land in question did not exceed \$1,000 in value. There was also an appeal from the Collector to the Commissioner of lands in lieu of the Resident, and an appeal from him to the Supreme Court.

In section 107 of the Land Code 1926 the jurisdiction of the Collector was extended to \$3,000 and a similar jurisdiction when the value exceeded \$3,000, was given to the Commissioner of Lands. The appeal from the Collector to the Commissioner was taken away, but there was a right of appeal to the Court from either the Collector or the Commissioner.

Up to this point the jurisdiction of the Collector, except as regards amount, was not restricted in any way, but Enactment No. 31 of 1928 introduced an important limitation. The jurisdiction is now given when a person claims "otherwise than by virtue of an agreement for sale", and this limitation is reproduced in the present Land Code. In my opinion this limitation must not be given too wide an interpretation, and I do not think it includes every case where the claimant has acquired such rights as he has by purchase. It is more reasonable to suppose that it was intended that the Collector should not be required to deal with difficult questions of claims for specific performance by a purchaser against his vendor, in which case relief could only be obtained through the Courts. It is also to be noticed that section 38 (iv) of the 1911 Enactment is not reproduced in the 1926 Code, and it must be taken therefore that since that time the Court has concurrent jurisdiction with the Collector in all matters falling under section 107 (i).

Upon reviewing the history of this section I have little doubt that the object thereof was to give the Collector full jurisdiction to deal with all matters, not expressly excepted, where the land was held under E.M.R. the justification for giving such a jurisdiction to an officer not necessarily highly qualified in law being that the subject matter of any claim would usually be of very

small value, and that it would be a hardship on the rayats to compel them to employ the expensive procedure of the Courts. There was ample safeguard against a miscarriage of justice in the right of ultimate appeal to the Courts. Since 1926 there has also been a provision (section 238 of the Land Code) enabling the registering authority of his own motion to refer any question for determination by the Court. I find, therefore, that the Collector had jurisdiction to deal with the matters submitted to him in this case. The appeal will therefore be allowed and the case referred back to the Collector for decision on the merits.

I am not sure that on a strict interpretation of Aitken, J's judgment the same conclusion, as to the wide nature of the Collector's jurisdiction, is not implicit. Amongst the matters on which he suggests that the Collector has jurisdiction is "the defeat of the proprietor's title by operation of law". It is difficult to visualise any claim by a person who is not on the register unless such claim has a legal basis, and if such claim were established, the proprietor's title would presumably be defeated by operation of law. In my opinion, however, although the result might be the same, I do not think that this is the proper line of approach. Instead of ascertaining the Collector's jurisdiction from various sections of the Land Code which are not specifically referred to in section 107, I would prefer to make an attempt to interpret the section as it stands. In its ordinary meaning the section would appear to give an unfettered jurisdiction apart from any limitations which are expressly mentioned.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, AG. J.

November 7, 1938

SOUTHERN OMNIBUS CO., LTD.

& ANOR. Appellants
vs.

LAKSAMANA HAJI MOHAMED SAID

BIN HAJI HASSAN.....Respondent

[NEGRI SEMBILAN MAGISTRATE'S CIVIL APPEAL

No. 4 of 1938]

*Negligence—collision—injury to motor car
 —no repairs done to damaged car—trading-in of
 car—special damages.*

The respondent's car came into collision with the first appellant's omnibus and sustained substantial injury. After the accident the respondent had an estimate prepared of the probable cost of the necessary repairs to his motor car as a result of the accident. Instead of having the car repaired the respondent traded it in to a firm of motor dealers in its damaged condition and obtained a new car. The respondent sued the appellants for damages for the collision and was awarded by the Tampin Magistrate a sum of \$165.80 made up of \$25/- general damages and \$140.80 (the amount of estimated